

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9074 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL  
and  
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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NAVINCHANDRA K SHROFF

Versus

STATE OF GUJARAT

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Appearance:

MR AJ SHASTRI for Petitioner  
MS NANDINI JOSHI, AGP for Respondents

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CORAM : MR.JUSTICE J.M.PANCHAL  
and  
MR.JUSTICE M.C.PATEL

Date of decision: 25/09/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Ms. Nandini Joshi, learned A.G.P. waives service of notice of rule on behalf of the respondents. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the petition is taken-up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the action of acquiring land bearing survey no. 228/2 of village Gavier belonging to the petitioner and notification issued by the State Government under section 4(1) of the Land Acquisition Act, 1894, which is published in the Official Gazette on March 30, 1999.

3. The petitioner was owner of land bearing survey No.228/2 situated at village Gavier. A proposal was made to the State Government to acquire the land belonging to the petitioner and others for the public purpose of extension of Surat Aerodrome Air-strip. On scrutiny of the said proposal, the State Government was satisfied that the lands belonging to the petitioner and others were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in the Official Gazette on March 30, 1999. A copy of notification published under section 4(1) of the Act is produced by the petitioner at Annexure-C to the petition. The petitioner has stated in the petition that other alternative land belonging to the Government itself is available which is lying vacant and unused since number of years and, therefore, acquisition of fertile agricultural land belonging to the petitioner is illegal. The petitioner has claimed that no notice was issued to the petitioner calling upon him to file objections to the proposed acquisition, nor opportunity of hearing was accorded to him and, therefore, notification under section 4(1) of the Act published in the Official Gazette should be set aside. The petitioner has averred that before few years, an attempt was made by the State Government to acquire lands of other villages for the same purpose, but no steps were taken to complete the acquisition of those lands and steps taken by the State Government to acquire the land of the petitioner are illegal. The petitioner has stated that the petitioner being an agriculturist, is dependent on the income from sale of agricultural produces and deprivation of the property is in breach of provisions

contained in Articles 14, 19 & 21 of the Constitution. The petitioner has claimed that without evaluating the situation, land of the petitioner is sought to be acquired, which is nothing-else, but grabbing of the same and, therefore, the reliefs claimed in the petition should be granted. Under the circumstances, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

4. Mr. M.S.Gohil, Special Land Acquisition Officer, Branch-I, Surat has filed affidavit-in-reply on behalf of respondent no.2 controverting the averments made in the petition. In the reply, it is stated that for the extension of Air-strip of Surat (Gavner) Airport, steps have been taken to acquire land of the petitioner pursuant to scrutiny of proposal which was sent by the Executive Engineer, Roads & Buildings Division, Surat. The reply proceeds to state that the Collector, Surat in exercise of powers conferred on him by section 52 of the Act had issued orders on March 26, 1999 pursuant to which inspection of site was carried out and thereafter notification under section 4(1) of the Act was issued which was published in Official Gazette on April 1, 1999. In the reply, Special Land Acquisition Officer has mentioned that notification issued under section 4(1) of the Act was displayed at the site as well as Gamchora on April 15, 1999 and on the notice board at Taluka Office on April 8, 1999 and was also published in daily newspaper Gujarat Prabha on April 1, 1999 and in Gujarat Samachar on April 2, 1999. It is claimed in the reply that thereafter necessary procedure as required by law was followed and declaration under section 6 of the Act was made which was published in the Official Gazette on June 15, 1999. In the reply, particulars of publication of declaration made under section 6 of the Act at the office of Mamlatdar and in daily newspapers are also given. Further the reply shows that notices under section 9(1) & 9(2) of the Act were issued to the interested persons calling upon them to adduce evidence before the Land Acquisition Officer regarding compensation to be paid to them. In the reply it is averred that possession of the disputed land was taken on August 14, 1999 and the land was handed over to the acquiring body which has deposited 80% of the compensation amount in advance. In the reply it is pointed out that one Shri Dhirubhai Keshavbhai Patel and others had filed Special Civil Application No. 6152/99 before the High Court claiming similar reliefs and as the said petition has been dismissed by Court (Coram : M.H.Kadri & C.K.Buch,JJ.) vide order dated March 14, 2000, this petition should also be dismissed. In order

to emphasis that the acquisition is justified, it is mentioned in the reply that even Khar lands from villages Dumas, Bhimpore and Abhva were also acquired for the purpose of extension of Air-strip and acquisition of the land belonging to the petitioner is not illegal in any manner. After denying the allegation that the land which was acquired earlier for extension of Air-strip was sold, the Land Acquisition Officer has mentioned in his reply that the committee constituted under the chairmanship of the Chief Secretary and others, had heard all the interested parties, after which proposal to acquire the land was made and, therefore, acquisition proceedings cannot be termed as malafide. By filing the reply, the Special Land Acquisition Officer, Branch-I, Surat has demanded dismissal of the petition.

5. The petitioner has filed affidavit-in-rejoinder denying the averments made in the affidavit-in-reply of Special Land Acquisition Officer, Surat and reiterated what is stated in the petition. By filing rejoinder, the petitioner has emphasised that he is entitled to the reliefs claimed in the petition.

6. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. It is not in dispute that Dhirubhai Keshavlal Patel, who was the owner of agricultural lands situated at village Vanta and Gavner of Choryasi Taluka, had filed petition and claimed reliefs which are claimed by the petitioner in the present petition. The Court (Coram : M.H.Kadri & C.K.Buch,JJ.) vide judgment dated March 14, 2000 has dismissed the petition. The learned counsel for the petitioner has stated at the Bar that as the present petition involves the same questions which were raised by Shri Dhirubhai K.Patel in Special Civil Application No. 6152/99, this petition should also be disposed of in terms of judgment dated March 14, 2000 rendered in the said petition. We have perused the judgment of the High Court dated March 14, 2000 rendered in Special Civil Application No. 6152/99 and we are satisfied that similar points as are raised in this petition were raised therein and after considering everything, the Court has dismissed the petition. Moreover, the affidavit-in-reply filed by the Special Land Acquisition Officer, Branch-I, Surat makes it manifest that possession of the land is already taken on August 14, 1999 and handed over to the acquiring body. Once possession of the land acquired is taken, the land vests absolutely in the Government free from all encumbrances. There is no provision in the Act by virtue of which the land which vests absolutely in the

Government, reverts back to the owner. The record does not indicate that the acquisition is malafide in any manner. The suitability of the land is a question which has to be decided by the Government after considering the relevant factors including the report of the Land Acquisition Officer submitted under section 5-A(2) of the Act and in such matters, Court hearing petition under Art.226 of the Constitution does not exercise appellate powers. Having regard to the facts of the case and more particularly, in view of judgment of the High Court dated March 14, 2000 rendered in Special Civil Application No. 6152/99, we are of the opinion that the reliefs claimed in the petition cannot be granted and the petition has no substance.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no order as to costs.

(J.M.Panchal, J.)

( M.C.Patel, J.)

(patel)